

<b>TO:</b>  <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b> <b>or</b> <b>Commissioner of Trademarks</b> <b>P.O. Box 1451</b> <b>Alexandria, VA 22313-1451</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
08-cv-01268-EWN-MJW	6/12/2008	<b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF		DEFENDANT
WINE MASTER CELLARS, LLC		BARRY WAX, ET AL.

PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>6,991,117</b>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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3			
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5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
<b>GREGORY C. LANGHAM</b>		

Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

JUN 12 2008

Civil Action No. '08 - CV - 01268 - GREGORY C. LANGHAM  
Ewn - mJW CLERK

WINE MASTER CELLARS, LLC,  
a Colorado limited liability company,

Plaintiff

v.

BARRY WAX,  
a resident of New Mexico, and

LINE SALES, LLC,  
d.b.a. WINE LINE  
a New Mexico Limited Liability Company,

Defendants.

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COMPLAINT AND JURY DEMAND

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Plaintiff Wine Master Cellars, LLC ("Wine Master"), for its Complaint against Defendants Barry Wax ("Wax"), and Line Sales, LLC ("Line Sales") (collectively "Defendants"), alleges as follows.

**NATURE OF THE ACTION**

1. In this action, Wine Master seeks injunctive and monetary relief for acts of patent infringement under the laws of the United States, Title 35, United States Code.

### **PARTIES**

2. Wine Master is a Colorado limited liability company having a principal place of business at 2000 S. Dahlia St., Suite 300, Denver, CO 80222.

3. Upon information and belief, Defendant Wax resides at 10 Canon Escondido, Sandia Park, NM 87047.

4. Upon information and belief, Defendant Wax is the organizer of Defendant Line Sales and personally controls and directs the activities of Defendant Line Sales.

5. Upon information and belief, Defendant Wax and Defendant Line Sales are doing business under the trade name "Wine Line."

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and § 1338(a).

7. This Court has personal jurisdiction over Defendants in this action. Venue is proper in this District under 28 U.S.C. § 1391. Defendants' acts of patent infringement have damaged a company whose business is centered in Colorado. Upon information and belief, Defendants operate or contract to be operated at least two websites on the Internet that sell and offer for sale wine racks, namely, <http://kitchenloop.com/wln057.html> and <http://store.priceground.com/wln057.html> ("the Wine Line Websites"), that are accessible to consumers and potential consumers in the State of Colorado. Upon information and belief, Defendants directly or indirectly sell and offer for sale the infringing wine racks on the Wine Line Websites.

## **GENERAL ALLEGATIONS**

### **Wine Master's Business and Intellectual Property Rights**

8. Wine Master sells its patented wine rack system under the trademark VINTAGEVIEW® ("the VintageView products"). Wine Master is the owner of U.S. Patent Number 6,991,117 ("the '117 Patent"). Wine Master is the owner of all right, title and interest in and to the '117 Patent. A copy of the '117 Patent is attached as Exhibit A. The VintageView products are protected by the '117 Patent, which issued on January 31, 2006.

9. The VintageView products virtually disappear when installed and stocked with wine bottles, creating the illusion that the bottles are suspended in air. The VintageView products can hold the wine bottle label facing forward such that the wine racks display the "art of the label." A copy of a representative portion of Wine Master's 2007 catalog of VintageView products is attached as Exhibit B.

10. Wine Master sells the VintageView products both directly to consumers throughout the United States, including the State of Colorado, through its website, and indirectly through its authorized distributors.

### **Defendants' Business and Infringing Products**

11. On information and belief, Defendants have sold and offered for sale wine rack products ("the Wine Line Racks"), including Defendants sales and offers for sale hosted and facilitated on the Wine Line Websites. Portions of the Wine Line Websites are attached as Exhibit C.

12. On information and belief, the Wine Line Products infringe one or more claims of the '117 Patent. The Wine Line Products are shown in pictures on the Wine Line Websites, which are shown in Exhibit C.

13. Defendants' infringement has not been innocent and has been willfully performed with full knowledge of the '117 Patent. Wine Master has requested that Defendant Wax and Defendant Line Sales dispose of the infringing inventory produced by Defendants ("the Wine Line Inventory") without further infringement of the '117 Patent.

14. On March 16, 2007, Wine Master, through its counsel, sent a letter to Defendant Wax requesting that he obtain a license of the '117 Patent from Wine Master to cover the sales of the Wine Line Inventory while Defendants phased-out the Wine Line Racks from Defendants' product offerings. The letter is attached as Exhibit D.

15. In 2008, Wine Master and Defendant Wax discussed the possibility of Wine Master purchasing the Wine Line Inventory from Defendants at wholesale prices to incorporate the Wine Line Inventory into Wine Master's inventory and for sale alongside the VintageView products.

16. Upon inspection of a sample of the Wine Line Inventory, Wine Master determined that the Wine Line Inventory was not of a sufficient quality to sell alongside the VintageView products and would otherwise require expensive repackaging to do so, thereby prohibiting incorporation within the Wine Master's inventory.

17. On April 8, 2008, Wine Master, through its counsel, sent a letter to Defendant Wax declining Defendants' offer to purchase the Wine Line Inventory and requesting that Defendant Wax destroy the Wine Line Inventory to avoid further infringement of the '117 Patent by Defendants. The letter is attached as Exhibit E.

**FIRST CLAIM FOR RELIEF**  
(Patent Infringement)

18. Wine Master repeats and re-alleges the allegations contained in the foregoing paragraphs 1-17. This is a claim for violation of the United States Patent laws, 35 U.S.C. §§ 101 *et seq.*

19. Wine Master has complied in all respects with 35 U.S.C. §§ 101 *et seq.*, and has secured the exclusive rights and privileges in and to the '117 Patent ("Wine Master Patent Rights").

20. On information and belief, Defendants have made, sell, and have sold the infringing Wine Line Racks in the United States through the Wine Line Websites under the name "Wineline Classic 12 Bottle Wall Mounted Wine Rack."

21. Defendants' conduct infringes the Wine Master Patent Rights.

22. On information and belief, Wine Master alleges that, as a direct and proximate result of its wrongful conduct, Defendants have realized and continue to realize profits and other benefits rightfully belonging to Wine Master. Accordingly, Wine Master seeks an award of damages pursuant to 35 U.S.C. § 284.

23. On information and belief, Defendants have willfully engaged in, and are willfully engaging in, the acts complained of with oppression, fraud, and malice, and have done so, and are doing so, in conscious disregard of the Wine Master Patent Rights. Wine Master is therefore entitled to a trebling of damages as allowable under 35 U.S.C. § 284.

24. Defendants' infringing conduct has also caused, and is causing, substantial and irreparable injury and damage to Wine Master in an amount not capable of determination, and, unless restrained, will cause further irreparable injury. Wine Master has no adequate remedy at

law. Wine Master is, therefore, entitled to both immediate and permanent injunctions against Defendants' infringement, pursuant to 35 U.S.C. § 283.

WHEREFORE, Wine Master requests judgment against Defendants, granting to Wine Master the following:

A. Grant a preliminary and permanent injunction restraining and enjoining all Defendants, and any principals, agents, servants, employees, successors and assigns of and all those in privity, concert or participation with Defendants from infringing any of the Wine Master Patent Rights;

B. Find that All Defendants have engaged in patent infringement by the acts complained of herein in violation of Federal Law.

C. Award to Wine Master monetary damages in an amount to be fixed as just by the Court in its discretion, including all of Defendants' profits or gains of any kind resulting from Defendants' unlawful conduct, said amount to be trebled, and exemplary (and punitive) damages, in view of the intentional nature of the acts complained of herein, including Wine Master's actual damages and including Defendants' profits, for patent infringement pursuant to 35 U.S.C. § 284.

D. Award to Wine Master its attorneys' fees and all of Wine Master's costs and expenses of litigation pursuant to 35 U.S.C. § 285.

E. Grant to Wine Master such other and further relief as the Court may deem just, proper and equitable under the circumstances.

#### **JURY DEMAND**

Wine Master demands a trial by jury of all issues so triable in this action.

Respectfully submitted this 12 day of June, 2008,

GREENBERG TRAURIG, LLP

s/John R. Posthumus

John R. Posthumus

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